IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO. 420 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE R.H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SUNIL @ HASMUKH KANTILAL PARMAR - Appellant(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Ms. Rekha Kapadia, learned Advocate appointed by the High Court Legal Aid Committee for Appellant.
Mr. R.C. Kodekar, Additional Public Prosecutor for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE R.H.SHUKLA

Date : 14/12/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. The appellant-original accused No.2 (“A-2” for short) along with other four accused (“A-1”, “A-3”, “A-4” and “A-5” for short) was charged and tried by the learned Additional City Sessions Judge, Court No.5, City Sessions Court, Ahmedabad in Sessions Case Nos.144 of 1998 and 145 of 1998 for commission of the offences punishable under Section 302, read with Sections 120B and 149, as well as Sections 147 and 148 of the Indian Penal Code (“IPC” for short) on the accusation that on 19th January, 1998, near M/s. Parin Diamond situated in Arvind Estate on a public road, A-2 and other four accused hatched a conspiracy and armed with deadly weapon formed an unlawful assembly and in furtherance of their common object, surrounded the deceased Paresh and A-2 gave a knife blow on the left side of the chest of the deceased Paresh and one on his back side, which has proved to be fatal, and A-3 caused injury by a hockey stick on the thigh of the complainant – Navneetbhai Nannubhai Patel and thereafter, they ran away.

2. At the end of the trial, as A-2 alone was found guilty of the commission of murder of the deceased Paresh, he was convicted *vide* the judgement and order dated 23rd March, 1999 for commission of the offence under Section 302 of IPC and was sentenced to imprisonment for life and fine of Rs.5,000/-, in default to undergo further rigorous imprisonment for a period of six months, whereas A-1, A-3, A-4 and A-5

were not found guilty of the offence, with which they were charged and, therefore, they were acquitted by giving them benefit of doubt.

3. Being aggrieved by the judgement and order of conviction and sentence dated 23rd March, 1999 passed by the learned Additional City Sessions Judge, Ahmedabad in Sessions Case Nos.144 of 1998 and 145 of 1998, A-2 has filed the instant Criminal Appeal with the aid of Section 374 of the Code of Criminal Procedure ("the Code" for short).

4. The prosecution case, as disclosed from the FIR and unfolded during the trial, is as under:

4.1 The deceased Paresh, complainant – Navneetbhai Nannubhai Patel and one Alkeshbhai Shambhubhai Patel, were engaged in the work of polishing diamonds in a firm named M/s. Perin Diamonds. Prior to the date of incident, that is, on 17th January, 1998, A-1 and the deceased Paresh had a quarrel in relation to their activities and therefore, they slapped each other. On the next date, A-1 had also quarrelled with Alkesh Shambhubhai Patel. As per the case of the prosecution, A-1, in furtherance of the said dispute, conspired with other accused, i. e. A-2, A-3, A-4 and A-5, and on 18th January, 1998, A-1 with A-2 to A-5, who were, in fact, not working in the firm of M/s. Perin Diamonds, came over to the said factory with a view to beat the deceased Paresh. Since on 18th January, 1998, the deceased Paresh as

well as the complainant did not attend the work, the accused could not beat them. Therefore, on 19th January, 1998, the deceased Paresh went to his maternal uncle and explained him the difficulty that he was facing. His maternal uncle advised the deceased Paresh not to provoke or cause further quarrel with the accused and also advised to lodge a complaint with the appropriate police station. Therefore, the deceased Paresh and his maternal uncle went to Bapunagar Police Station for lodging the complaint. However, the said complaint was not registered as Bapunagar Police Station had no territorial jurisdiction to entertain the complaint. Thereafter, they lodged the complaint at Shaher Kotda Police Station. After registering the said complaint, the deceased Paresh, his maternal uncle and one Babubhai Madrasi came back to the factory of M/s. Parin Diamonds, where, as per further case of the prosecution, no sooner did the deceased Paresh and his maternal uncle alight from the scooter, A-2, who was armed with knife, ran towards the deceased Paresh and inflicted two stab injuries, one on the chest and another on the back. As a result thereof, the deceased fell down. In the meantime, A-3, who was also armed with the hockey stick, gave a blow on the thigh of the complainant-Navneetbhai, who was sitting outside the factory, as a result of which, Navneetbhai fell down. As per further case of the prosecution, Alkeshbhai Shambhubhai Patel, who tried to intervene in the scuffle, was also beaten up by A-4 and A-5. Thereafter, all the accused managed to flee away. As per further case of the prosecution, the deceased Paresh

thereafter was taken to Shardaben Hospital for treatment in an auto rickshaw, where he was declared dead by the doctor. Accordingly, a *Vardi* for the aforesaid incident was sent by Shardaben Hospital to Bapunagar Police Station and on receipt of the said *Vardi*, an offence was registered against the accused at C.R. No.I-20/1998 with Bapunagar Police Station and investigation of the case was handed over to Kuberbhai K. Patel, Police Inspector, Bapunagar Police Station. Thereafter, Kuberbhai K. Patel immediately rushed to Shardaben Hospital and registered the complaint of the complainant – Navneetbhai Nannubhai Patel and sent it for registration. He, thereafter, held the inquest on the dead body of the deceased Paresh and sent the same for post mortem. He also recorded the statement of the witnesses and drew the *panchnama* of the scene of offence and also collected the samples of blood stained earth as well as natural earth in presence of the *panchas* from the scene of offence. He also recovered the clothes of the deceased Paresh after drawing the *panchnama*. Thereafter, A-1 to A-4 were arrested and the weapons used by them in commission of the offence were recovered by drawing a *panchnama*. He, thereafter, arranged for Test Identification Parade of A-1 to A-4. He also sent the *muddamal* articles to the Forensic Science Laboratory ("FSL" for short) for chemical analysis.

4.2 On completion of the investigation, as sufficient

incriminating evidence was found against the accused, he filed the charge-sheet against A-1 to A-4 in the Court of learned Metropolitan Magistrate, Ahmedabad. Since A-5 was subsequently arrested, the supplementary charge-sheet was filed against him in the Court of the learned Metropolitan Magistrate, Ahmedabad. As the offence punishable under Section 302 of IPC is exclusively triable by the Court of City Sessions, the learned Metropolitan Magistrate, Ahmedabad committed the cases to the Court of Sessions, Ahmedabad.

4.3 The learned Additional City Sessions Judge, Ahmedabad, to whom the cases were made over for trial, consolidated both the cases and framed the common charge against the accused for commission of offences punishable under Section 302, read with Sections 120B and 149, as well as Sections 147 and 148 of IPC. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, they were put to trial by the learned Additional City Sessions Judge, Ahmedabad in Sessions Case Nos.144 of 1998 and 145 of 1998.

4.4 In order to bring home the charge levelled against the accused, the prosecution has examined as many as 16 witnesses and relied upon their oral testimonies. The details of which are detailed in paragraph-11 of the impugned judgment and order, they are as under:

PW	Name	Status	Exh. No.
1	Navneet Nannubhai Patel	Complainant	17
2	Bhupatbhai Babubhai Patel	Eye Witness	19
3	Armugam Kukkuswamy	Panch Witness	26
4	Rameshbhai Bhusabhai Patel	Panch Witness	27
5	Bhanubhai Ghemabhai Patel	Panch Witness	28
6	Ramesh Haribhai Patel	Panch Witness	29
7	Dhirubhai Nanjibhai	Panch Witness	31
8	Gulabsinh Prabhatsinh	PSO, Bapunagar Police Station	33
9	Dr. Vinodkumar Lajjaram Gupta	Medical Officer, Ahmedabad Civil Hospital	39
10	Ratansinh Amarsinh Chauhan	Police Constable	41
11	Dr. Mohmed Safi Nurmiya Shaikh	Medical Officer, Shardaben Hospital	43
12	Dr. Abhijit M. Dixit		46
13	Savdhanji Vajaji Darbar	Executive Magistrate	49
14	Alkeshbhai Shambhubhai Patel		53
15	Mafatlal Premchand Chauhan	Panch Witness to T.I. Parade	56
16	Kuberbhai Karsandas Patel	Investigating Officer	57

4.5 To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, the details of which are mentioned in paragraph-6 of the impugned judgment and order, which would be referred to in this judgement as and when required.

4.6 After recording of the evidence of the witnesses was over, the trial Court explained to the accused the circumstances appearing against them and recorded their further statement under Section 313 of the Code. In their further statements, they denied the case of the prosecution in its entirety and stated that false case has been filed against them. However, they neither produced any evidence nor did they examine any witness in support of their defence.

4.7 On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court has come to the conclusion that the prosecution has failed to establish that the accused have hatched the conspiracy and formed an unlawful assembly in furtherance of their common object of committing murder of the deceased Paresh. It is also held that the prosecution has failed to establish the nexus between A-1 on one hand and A-2, A-3, A-4 and A-5 on the other hand. It is also held that presence of A-1 was doubtful at the scene of offence and hence, he deserves to be given benefit of doubt. It is further held that the prosecution has failed to establish the complicity of A-1, A-3, A-4 and A-5 for commission of the offence with which they are charged. However, according to the trial Court, there is voluminous piece of evidence against A-2 as the oral testimonies of PW-1, Navneetbhai Nannubhai Patel, and PW-2, Bhupatbhai Babubhai Patel, proves in no uncertain

terms that A-2 inflicted fatal blows on the chest of the deceased Paresh. On the aforesaid finding, the trial Court held that the complicity of A-2 for commission of murder of the deceased Paresh is duly established. The trial Court, therefore, convicted A-2 for commission of the offence under Section 302 of IPC and sentenced him to undergo imprisonment for life and fine of Rs.5,000/-, in default to undergo further rigorous imprisonment for a period of six months, whereas acquitted A-1, A-3, A-4 and A-5 by giving them benefit of doubt, which has given rise to the present appeal at the instance of A-2.

5. Ms. Rekha Kapadia, learned Advocate appointed by the Legal Aid Committee appearing on behalf of the accused, has vehemently assailed the impugned judgment and order and contended that there is no evidence to connect A-2 for the offence with which he was charged. The trial Court has wrongly relied upon the oral testimony of PW-1, Navneetbhai Nannubhai Patel as well as PW-2, Bhupatbhai Babubhai Patel. According to her, the prosecution has projected them as eye witnesses, but, in fact, they are not the eye witnesses to the incident. It is also highlighted by her that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. The accused is falsely roped in on account of enmity with the deceased in connection with the incident, which had taken place prior to two days of the incident. According to her, no independent witnesses have been examined by the

prosecution and the witnesses examined by the prosecution are near and dear relatives of the deceased Paresh and therefore, no reliance can be placed upon their oral testimony. It is also emphatically submitted by her that the trial Court has misread the evidence of the so-called two eye witnesses and misdirected itself in coming to the conclusion that complicity of the accused for commission of the murder of the deceased Paresh is established. Therefore, according to her, the impugned judgement and order convicting and sentencing A-2 deserves to be quashed and set aside by allowing this appeal. She, therefore, urges to allow this appeal and thereby acquit A-2 of the offence with which he is charged.

6. *Per contra* Mr. R. C. Kodekar, learned Additional Public Prosecutor for the respondent-State, has vehemently submitted that the trial Court has recorded a categorical finding about the guilt of the accused and complicity of the accused is established by the prosecution on the basis of the evidence of PW-1, Navneetbhai Nannubhai Patel, and PW-2, Bhupatbhai Babubhai Patel, who are eye witnesses to the incident. He has also emphasised that the accused has committed the offence of murder of the deceased Paresh with intention and in pre-planned manner on account of the quarrel, which took place with the deceased Paresh prior to two days of the incident. According to him, the impugned judgement and order does not call for any interference of this Court. He,

therefore, urges to dismiss the appeal.

7. This Court has considered the submissions advanced by the learned Advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned Advocates of the parties with reference to broad and reasonable probabilities of the case. This Court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

8. There is no dispute to the fact that the deceased died a homicidal death. To prove this fact, the prosecution has examined and relied upon the evidence of PW-9, Dr. Vinodkumar Lajjaram Gupta, Exh.39. He has, *inter alia*, testified that on 19th January, 1998, he was on duty as a Medical Officer in Ahmedabad Civil Hospital. On that day, the dead body of the deceased Paresh was brought to him for performing autopsy. He and one Dr. D. K. Dixit, who was a Panel Doctor, performed the post mortem at 5:30 p.m. He had also issued post mortem report, which is on record at Exh.40. On a conjoint reading of the oral testimony

of PW-9, Dr. Vinodkumar Lajjaram Gupta, at Exh.39 and the post mortem report at Exh.40, it is seen that the deceased had received the following two external injuries:

> "(I) A stab wound of 4 x 2 cm over (Lt) anterior chest wall, both angle acute, margin sharp clear cut upper outer end 7 cm above & inward to the (Lt) nipple and Lower & medial end 7 cm upward & medial to the (Lt) nipple) upper end 7 cm below to the (Lt) mid clavicular point.
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> (II) A stab wound of 2 x 1 cm x 1 inside deep paraspind region at root of 10th rib (Lt) side."

The said injuries are recorded at Column 16 of the Post Mortem Report. As per the post mortem report, the cause of death of the deceased was haemorrhage shock due to stab injuries sustained. In view of the aforesaid oral evidence as well as post mortem report, there is no manner of doubt that the deceased died a homicidal death. The trial Court is, therefore, right in coming to the conclusion that the deceased died a homicidal death. We affirm the said finding.

9. Now, the next question, which is required to be answered by this Court, is as to whether the prosecution has succeeded in establishing the complicity of A-2 in respect of the charge levelled against him and

also that the prosecution has proved that A-2 was the author of the injuries caused to the deceased. In this connection, the prosecution has mainly relied upon the oral testimony of two witnesses, that is, PW-1, Navneetbhai Nannubhai Patel, Exh.17, and PW-2, Bhupatbhai Babubhai Patel, Exh.19, who are claimed to be the eye witnesses and therefore, the prosecution has projected them to be the eye witnesses.

10. PW-1, Navneetbhai Nannubhai Patel, Exh.17, in his oral testimony, has, *inter alia*, testified that he is doing the job of diamond polishing in M/s. Parin Diamond Company at Bapunagar and the incident had taken place on 19th January, 1998. He has testified that he was present outside the workshop. At that time, his brother, deceased Paresh, and maternal uncle - Bhupatbhai were also present. Along with them, one Babubhai Madrasi was also present. He was waiting for his brother. At that time, A-2, Sunil, and A-4, Bharat, came there outside the workshop. At that time, 2-3 persons also came there. Thereafter, A-2 took his brother – deceased Paresh at some distance. There was a knife in the hand of A-2, Sunil. He also tried to rescue his brother, but, somebody gave him a hockey blow from back side, therefore, he fell down. Thereafter, he saw A-2, Sunil, fleeing away from the scene of incident and he saw the deceased Paresh in profuse bleeding condition. Since his brother had sustained injuries on the chest, they had taken the deceased Paresh to the hospital, where the doctor declared him as dead. PW-1, Navneetbhai Nannubhai Patel, Exh.17, has filed the complaint at

Bapunagar Police Station, which is on record at Exh.18. It may be noted that this witness was cross examined by the learned Advocate of the accused at length and in great detail, but, this witness has successfully withstood the test of cross-examination and nothing substantial has been brought out even during his cross-examination, which would impeach the credibility of his evidence. Therefore, the oral testimony of PW-1, Navneetbhai Nannubhai Patel, inspires confidence.

11. On reappraisal of the oral testimony of PW-1, Navneetbhai Nannubhai Patel, at Exh.17, there is no reason to disbelieve his oral version as it is consistent with the complaint filed by him which is on record at Exh.18. He was present at the place of the incident from very beginning. He saw A-2 taking his brother forcibly. He also saw the knife in the hand of A-1. He also tried to help his brother, however, he was beaten by hockey stick from the back side and therefore, he fell down and could not reach to his brother to help him. Thereafter, he saw A-2 fleeing away from the scene of offence and his brother in profuse bleeding condition. According to us, the trial Court has rightly appreciated the evidence of this witness for coming to the conclusion that A-2 has inflicted the fatal blow upon the deceased Paresh.

12. The prosecution thereafter has examined and relied upon the oral testimony of PW-2, Bhupatbhai Babubhai Patel, at Exh.19. He has, *inter alia*, testified that he is doing the work of diamond polishing at

Manpasand Chambers since about 18 years. The incident had taken place on 19th January, 1998. He has deposed that on that day, he was with the deceased Paresh. After lodging the complaint with Shaherkotda Police Station and Anil Starch Police Chowky, he and his nephew - deceased Paresh had come to M/s. Parin Diamond Company, where the deceased Paresh used to work, at 12:00 noon. He has also testified that he had asked the deceased Paresh whether any person who had come to beat him was present there or not. On the deceased Paresh identifying two persons, he had tried to settle the dispute, however, at that time 2 – 3 persons had come running towards them and all of a sudden, started uttering provoking words and abuses. He has also testified that he had informed the deceased Paresh to go inside the workshop and he would try to settle the dispute, however, the moment the deceased Paresh walked a distance of about 10 ft., one of the persons present there came running towards decease Paresh and inflicted knife blow on the left side of the chest of deceased Paresh. Due to the infliction of knife blow, the deceased had fallen down. At that time, the same person had also tried to inflict the knife blow on the back of deceased Paresh, but, he had caught hold him. He has categorically testified that the incident had taken place in front of his eyes. He has identified A-2 in the trial Court to be the person who inflicted the knife blow on the deceased Paresh. It may be noted that this witness was cross examined by the learned Advocate of the accused at length and in great detail, but, nothing

substantial has been brought out even during his cross-examination, which would impeach the credibility of his evidence. Therefore, the oral testimony of PW-2, Bhupatbhai Babubhai Patel, inspires confidence.

13. On reappraisal of the oral testimony of PW-2, Bhupatbhai Babubhai Patel, at Exh.19, it is seen that he has witnessed the incident and he saw A-2 giving knife blow to the deceased Paresh, who was his nephew. Therefore, there is no reason to discard his oral testimony. According to us, the trial Court has rightly appreciated the evidence of this witness for coming to the conclusion that A-2 has inflicted the knife blow upon the deceased Paresh.

14. Thereafter, the prosecution has examined and relied upon the oral testimony of PW-3, Armugam Kukkuswamy, Exh.26, who is a *panch* witness of the scene of offence. In his presence, the *panchnama* of the scene of offence was prepared as well as blood stained earth was recovered. He has supported the prosecution case and stated that in his presence, the *panchnama* was prepared.

15. The prosecution has thereafter examined and relied upon the oral testimony of PW-4, Rameshbhai Bhusabhai Patel, who is a *panch* witness, and in his presence, the *muddamal* weapons, viz. hockey, pipe and knife, were recovered. He has also supported the prosecution case.

16. The prosecution has thereafter examined and relied upon

the oral testimony of PW-5, Bhanubhai Ghemabhai Patel, Exh.28. He is *panch* witness of the recovery of clothes of the accused. He has also supported the case of the prosecution. Similarly, the prosecution has also examined and relied upon the oral testimony of PW-6, Rameshbhai Haribhai Patel, Exh.29, who is also a *panch* witness of the recovery of clothes of the accused. He has also supported the case of the prosecution. The said *panchnama* is on record at Exh.30.

17. On overall reappraisal of the evidence of the prosecution, it is seen that the quarrel did take place between A-1 and the deceased Paresh on 17th January, 1998. Thereafter, on 19th January, 1998, A-2 gave fatal blows to the deceased in presence of PW-1, Navneetbhai Nannubhai Patel, and PW-2, Bhupatbhai Babubhai Patel. PW-1, Navneetbhai Nannubhai Patel, and PW-2, Bhupatbhai Babubhai Patel, have testified in no uncertain terms that A-2 gave fatal blows to the deceased Paresh. The prosecution has, therefore, successfully established the complicity of A-2 in commission of the offence of murder of the deceased Paresh. The trial Court, therefore, has rightly recorded the order of conviction and sentence against A-2 for the offence punishable under Section 302 of IPC.

18. We find ourselves in complete agreement with the aforesaid findings, ultimate conclusion and the resultant order of conviction and sentence, as according to us, no other finding, conclusion or order is

possible except the one reached by the trial Court, which is required to be affirmed by us.

19. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial Court, and as the appeal lacks merit, deserves to be dismissed by confirming the judgment and order passed by the trial Court.

20. For the foregoing reasons, the appeal fails and accordingly, it is dismissed. Resultantly the judgment and order of conviction and sentence dated 23.03.1999 rendered in Sessions Case Nos.144 of 1998 and 145 of 1998 by the learned Additional City Sessions Judge, Court No.5, Ahmedabad, convicting and sentencing A-2 for commission of murder of the deceased Paresh, is hereby confirmed and maintained.

21. It is reported by Mr. R.C. Kodekar, learned Additional Public Prosecutor, that A-2 was released on temporary bail for a period of 15 days with effect from 25th September, 2000 to 11th October, 2000. However, he has not surrendered to the Jail Authority on 11th October, 2000 and since then, he is absconding. He, therefore, urges to pass appropriate order to procure his presence and send him to jail to serve out the remaining period of sentence.

22. As per the jail remarks sheet, it is seen that A-2 was released

on temporary bail for a period of 15 days with effect from 25th September, 2000 and he was to surrender on 11th October, 2000, but, however, he has not surrendered to the Jail Authority and since then, he is absconding. Therefore, the Jail Authorities are directed to take effective steps to procure the presence of A-2 to serve out the remaining sentence and the learned Additional City Sessions Judge, Ahmedabad is also directed to issue Non-Bailable Warrant against A-2 to procure his presence and send him to jail to serve out the remaining sentence.

23. *Muddamal* articles to be disposed of as per the directions contained in the impugned judgment and order.

[A. M. Kapadia, J.]

[R. H. Shukla, J.]

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